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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3828 OF 2006

Kailas Dnyadeo Benke & Anr. .. Applicants
Versus
State of Maharashtra .. Respondent

WITH

CRIMINAL APPLICATION NO.3829 OF 2006

Ajit Sarjerao Kale & Ors. .. Applicants
Versus
State of Maharashtra .. Respondents

Mr.Shirish Gupte, Senior Advocate with
Mr.S.M.Gorwadkar for applicants
Mr.R.Y.Mirza, A.P.P. for State
Ms.M.M.Deshmukh, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th October 2006

P.C.

. Heard Mr.Gupte, learned Senior Counsel

for applicants and Mr.Mirza and Ms.Deshmukh, A.P.P. for respondents.

2. Applicants are arrested in connection with C.R.No.82 of 2006 which is now numbered as Special Case No.7 of 2006 on 21st April 2006. The C.R. is registered at Yawat Police Station, Taluka Daund, Pune Dist. Offences alleged are under sections 302, 120(B), 143, 147, 148, 149, 504, 506 of I.P.C. and under sections 3(1)(X) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act, 1989

3. Applicants have been arrested on 21st April 2006 and 5th May 2006.

4. Mr.Gupte has invited my attention to the statement of complainant Ranjana who is wife of deceased. He has also invited my attention to her supplementary statement. He submits that the son of deceased Ganesh has not supported prosecution case. In his submission, there are

glaring inconsistencies and major descripancies in the two statements of complainant and she has changed her version substantially. In the first statement it is alleged that she reached the site at about 8.00 a.m. in the morning carrying break-fast for the deceased husband and the deceased was lying on the ground along with other and narrated the incident to her. The narration is that the deceased and the other person were assaulted with sticks and iron rods having sharp edges on either of them. The intention was to kill because the applicants were agitated by the fact that the deceased was cultivating agricultural land in which he had no right. Mr.Gupte submits that in her second/supplementary statement, the complainant has substantially changed her version. She has stated that she saw the applicants assaulting the deceased. Mr.Gupte submits that in the first statement she states that her son Ganesh had accompanied her to the agricultural land and the site of incident. He was present there. However, in the second

statement she states that the son was following her. He has also invited my attention to medical report with regard to both deceased and has contended that the nature of weapon allegedly used and the injuries caused have absolutely no co-relation. Some of the injuries caused could not have been caused by the weapon allegedly used and recovered. In such circumstances, prima facie the applicants cannot be said to be guilty of offence of murder, is the submission.

5. Learned A.P.Ps. have taken me through the statements of the complainant as also the son and the medical report in extenso. They have contended that this is not a stage to decide evidentiary value of the materials. It is their submission that the deceased were killed brutally by sharp edged weapons and nature of injuries so also the recoveries would indicate that the applicants are connected with the crime. They are guilty of commission of serious offence. Therefore, even if the investigations are

complete and charge sheet is filed, they should not be enlarged on bail.

6. It is pertinent to note that the learned A.P.Ps. have not contended that the applicants have such antecedents or there is an apprehension of such a nature as would create a reasonable doubt in the mind of the Court about their availability at the trial or that they would threaten prosecution witnesses or tamper with the same otherwise.

7. The entire emphasis is on the seriousness of the crime and the punishment that the same attracts in law.

8. With the assistance of learned Counsel for both sides, I have perused the statement of complainant, her supplementary statement and the injury certificate. I have perused the relevant columns. Some of the injuries are stab injuries. The deceased is supposed to have narrated the

incident to his wife and has pointed out that the assault took place with wooden sticks and iron rod. Complainant's version on the first occasion does not indicate with certainty about the weapons. In any event, it is not clear as to which is the weapon which has sharp edge. It is not clear as to whether the same is iron rod or wooden stick. That apart, I find substance in the contention of Mr.Gupte that the version of the complainant has undergone a substantial change within a very short duration. If the incident has taken place in the early morning presumably between 7 and 8 a.m. and the F.I.R. is lodged after about five hours, there could not have been such a drastic change in the version. It cannot be held finally at this stage that the version is such as would not make any difference to the prosecution case or would have little effect or impact otherwise. However, when both versions are on record they cannot be brushed aside either. Even at a prima facie stage, it indicates that the complainant is not sure

whether she has witnessed the assault or has reached the site after the same took place. The statements do not indicate with certainty as to whether she saw the deceased lying on the ground and in a position to narrate the incident to her. The son and others including her in-laws, prima facie, do not support this version. At this stage, it cannot be said that the assault took place with the weapon which had sharp edge or atleast which one of them had the same. The complainant in one breath proclaims to have recorded some sort of dying declaration, whereas she proclaims to be an eye witness in the very next moment. It is in such circumstances and in the peculiar facts of this case that the prosecution version becomes prima facie doubtful. While it is true that at this stage one cannot probe deeper and decide the evidentiary value of materials produced but prima facie, glaring descripancies also cannot be brushed aside or ignored. It is applying all relevant principles and taking an over all view of the matter, in my

view, with stringent conditions being imposed, the applicants deserve to be enlarged on bail.

9. Mr.Gupte has pointed out that the incident has a history of disputes where the complainant and her family members including the deceased were also involved. The complainant had filed complaints alleging atrocities on account of their caste against virtually everybody. The disputes essentially arise out of rights of cultivation and ownership in agricultural lands. The applicants on their own have agreed to reside outside the village till the conclusion of trial. Hence, following order:-

i) The applicants (1) Kailas Dnyadeo Benke (2) Pratap Baban Kale, (3) Ajit Sarjerao Kale, (4) Ganesh Dnyadeo Kale and (5) Nitin Baban Kale, arrested in connection with C.R.No.82 of 2006 now Special Case No.7 of 2006 registered with Yawat Police Station shall be enlarged in

the sum of Rs.10,000/- with one or two local sureties in the like amount.

ii) The bail is granted subject to condition that the applicants shall not reside within the limits of Daund Taluka. The applicants will remain present before the nearest Police station to their residence outside limits of Daund taluka once a week on every Friday between 5.00 p.m. and 7.00 p.m. till conclusion of the trial. However, applicants are allowed to enter Daund taluka only to attend the trial.

iii) The order of bail will be given effect only after the applicants furnishe to the investigating officer the details about his place of residence and address where they propose to stay after they are enlarged on bail. The applicants will not change their residential address

thereafter till the conclusion of trial without prior intimation to the Investigating officer.

iv) The bail is granted subject to condition that the applicant shall not directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with the prosecution evidence.

v) The applicant shall cooperate with the learned Trial Judge for expeditious disposal of the case. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of

trial.

vii) Application is disposed of in above terms.

viii) Parties to act on an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)